LIBRARY
SUPREME COURT, U.S.

No. 340

Office - Supreme Court, U.S.
FILED
AUG 2 1957
JOHN T. FEY, Clerk

# SUPPLEMENTAL RECORD OF APPELLEE.

## United States Court of Appeals.
FOR THE EIGHTH CIRCUIT.

---

No. 15,686.
CIVIL.

---

MARTIN M. WICK,
APPELLANT,

vs.

JOSEPH KESHNER,
APPELLEE.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI.

FILED
JAN 20 1957

# United States Court of Appeals
## FOR THE EIGHTH CIRCUIT.

---

**No. 15,686.**
CIVIL.

---

MARTIN M. WICK,
APPELLANT,

vs.

JOSEPH KESHNER,
APPELLEE.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI.

---

## INDEX.


| | Print |
|---|---|
| Supplemental Record of Appellee | 1 |
| Corrections in Testimony of Witnesses | 1 |
| Plaintiff's Witnesses | 1 |
| Joseph Keshner | 1 |
| Direct Examination | 1 |
| R. 15, Tr. 16 | 1 |
| R. 16, Tr. 17 | 1 |
| R. 16, Tr. 19 | 1 |
| R. 16, Tr. 21 | 2 |
| R. 19, Tr. 30 | 2 |
| R. 19, Tr. 31-32 | 2 |
| R. 19, Tr. 69 | 2 |
| R. 20, Tr. 70 | 2 |

R. 21, Tr. 75 ..... 2
R. 25, Tr. 81 ..... 3
R. 26, Tr. 83-84 ..... 3
R. 28, Tr. 91 ..... 3
Cross-Examination ..... 3
R. 29-33, Tr. 95-96, 98-99, 101, 104-106, 109 ..... 3
Redirect Examination ..... 7
R. 32-33, Tr. 116-119 ..... 7
Recross-Examination ..... 8
R. 33, Tr. 118-119 ..... 8
Redirect Examination ..... 8
R. 33, Tr. 119-122 ..... 8
Martin M. Wick ..... 9
Direct Examination ..... 9
R. 34-37, Tr. 121-148 ..... 9
Cross-Examination ..... 11
R. 37-44, Tr. 148-196 ..... 11
Orville Helms ..... 19
Cross-Examination ..... 19
R. 50-51, Tr. 230-246 ..... 19
Curtis Eastwood ..... 20
Direct Examination ..... 20
R. 48-49, Tr. 223-226 ..... 20
Cross-Examination ..... 20
R. 50-51, Tr. 231-246 ..... 20
R. Emmett Costello ..... 22
Direct Examination ..... 22
R. 52, Tr. 247-251 ..... 22
Mary O'Haran ..... 22
Direct Examination ..... 22
R. 53, Tr. 253-266 ..... 22
Cross-Examination ..... 23
R. 54-55, Tr. 266-278 ..... 23
Patricia O'Haran ..... 23
Direct Examination ..... 23
R. 55-56, Tr. 278-281, 283 ..... 23
Cross-Examination ..... 24
R. 56-57, Tr. 284-294 ..... 24
Defendant's Witnesses ..... 25
Frank Richards ..... 25
Direct Examination ..... 25
R. 59, Tr. 33 ..... 25
Cross-Examination ..... 26
R. 60, Tr. 39-55 ..... 26
Glen Waples ..... 27
Direct Examination ..... 27
R. 62, Tr. 302-303 ..... 27
Katherine Keshner ..... 28
Direct Examination ..... 28
R. 65, Tr. 318 ..... 28
Cross-Examination ..... 30
R. 67, Tr. 334 ..... 30
George E. Cooper ..... 31
Direct Examination ..... 31
R. 72, Tr. 360 ..... 31
Cross-Examination ..... 32
R. 73, Tr. 367 ..... 32
Clint Holloman ..... 35
Direct Examination ..... 35
R. 74, Tr. 374 ..... 35
Defendant's Exhibit E, Judgment in the case of Joseph Keshner vs. Martin M Wick, in the Magistrate Court ..... 35
R. 76, Tr. 384 ..... 35

## Appellee's Supplement to the Printed Record.

### Plaintiff's Evidence.

Appellant has criticized all findings of fact excepting finding of fact 11, and has challenged the sufficiency of evidence to support substantially all of the findings of fact. In view of the foregoing, appellee hereby submits additional portions of the record as he deems essential for consideration by the Court in deciding the case, and which were omitted in appellant's record or inaccurately stated therein.

Whenever appellant's record is hereinafter referred to, it will be designated as "R.," and whenever the transcript of the record is referred to, it will be designated as "Tr."

---

Witness JOSEPH KESHNER (direct examination):

R. 15, at the end of the quotation from Tr. 16:

Q. Did you show the individual animals? A. I did.

In lieu of the first sentence at top of R. 16, Tr. 17:

Plaintiff's Exhibit 2 is a carbon copy of the statement that I handed Wick. Wick got a statement and we both signed it.

In lieu of the second sentence at the top of R. 16, the following:

The copy is not signed or dated, the check was the receipt.

R. 16, Tr. 19, at beginning, to be added:

The reason why we didn't use these tattoo numbers was that these cows were guaranteed safe with calf, and they were not all safe with calf at that time, and that is the way we sell cattle. Should they not conceive, another cow would have to be substituted or money refunded if they didn't conceive.

P. 16, commencing of recital of Tr. 21:

Between time of purchase and our departure, Wick had been out to see his cattle.

R. 19, Tr. 30, immediately above "Plaintiff's Exhibit 7":

I did not recollect telling the Association that the calves were owned by me when they were born.

R. 19, Tr. 31-32, in lieu of the last sentence in the third paragraph from the bottom:

They show the breeder of the calves was Good Earth and there are ditto marks under some showing the owner was Good Earth. Some don't have it.

R. 19, commencing recital of Tr. 69, as follows:

The calves were dropped between sale and transfer.

R. 20, first sentence at top of page:

They were sold to Wick in February (Tr. 76), but they had to stay there until they were safe in calf. I didn't consider myself the owner after February 9th; the check shows that.

R. 21, Tr. 74. In lieu of Tr. 74 as set forth:

The reason I held onto the certificates was because I needed them while looking after Wick's cattle. I had to have the dam and the sire to register the calves. When Wick did not want me to keep the cattle I sent him the certificates. I got no other letter asking for them. I got no telephone call asking for them.

R. 21, Tr. 75:

Q. Mr. Keshner, did you answer that letter of September 24 that Wick sent you, asking for his money back?

A. Not unless you have it.

The Court: Well, now, if you don't know, just say so.

The Witness: I don't know, Judge.

(Tr. 76) The Court: That is like saying "I'm telling the truth unless you can prove I'm lying."

The Witness: Joe don't lie.

R. 25, bottom of page, add the following, Tr. 81:

Q. Oh, because you wanted them. Did you see any obligation (Tr. 82) on your part to send those pedigrees to the man who paid you $15,000 some eight or ten months before?

A. He could have had them any time he wanted them.

Q. You never sent them to him? A. No reason.

Q. You kept them there? A. No reason to.

Q. You kept them there until he wanted his money back? A. Taking care of his cattle.

R. 26, in lieu of Tr. 83 and 84:

Q. Now, Mr. Keshner, these fifteen cows that were sold by you, or allotted to Mr. Wick by you, were fifteen out of a herd of thirty-six that you had bought approximately one year previous from J. P. Ellis of Montgomery City, Missouri, is that correct? A. They were, yes.

I paid Ellis, for all 36, for cows and calves, the sum of $11,000.00. I call it a calf when it is still nursing (Tr. 84). Some were still nursing. I kept records of their ages.

R. 28, Tr. 91, to read as follows:

Exhibits 4-A to 4-O are the certificates for the 15 cows, not calves, received from Ellis when we purchased the herd, and remained in our possession all the time from then until we sent them to the association in July of 1952 (Tr. 92). I can't tell you whether we got Exhibits 13-A to 13-N, the pedigrees, from Ellis, or whether we made them up. We make up pedigrees. We don't send them out. That is for our information, pedigrees.

R. 29-33. Because of numerous omissions from the testimony of witness Keshner on cross-examination, redirect examination, recross-examination, and redirect examination, so as not to interfere with the continuity we here reprint the same with the insertions:

I was introduced to Wick in Chicago by Mrs. O'Haran, who is the mother of Mary Lou O'Haran previously referred to. I had known Mary Lou before. Wick and I talked about cattle then. I didn't see Wick again until January of 1952, when I was asked to join them to go down to Oklahoma to attend a sale of cattle. We went to Oklahoma (Tr. 95). I think Mary Lou O'Haran con-

tacted me then. They came and picked me up and we attended a couple of sales in Oklahoma.

In the evening, after we came back from Oklahoma, I discussed with Wick the purchase of cattle from me. That was the first time we discussed it in detail; we had talked about cattle in a general way before (Tr. 96). I told him I could furnish him bred cows for $1,000 apiece, guaranteed bred. By "guaranteed bred" I meant a cow that would conceive and have a calf, drop a calf. If a cow does not have a calf or does not conceive you have to replace it with a cow of equal value or refund the money.

On February 9, 1952, Wick was with me in the afternoon, or something like that; I don't know how many hours.

Q. Did you at any time represent to him out of what particular herd, prior to February 9, did you represent to him at any time out of what particular herd of cattle you were going to select the ones that you were going to sell to him?

A. I told him I would pick them out of the Ellis herd that I had purchased. I had purchased a herd; I had some left; I had sold some.

I had sold ten head to Louis Voight at $1,000 apiece; I had sold four head to Rosemary Danforth at $500 apiece, and I had sold one to Elmer Koster at $1,000. I sold the four by phone before they were delivered; I sold the ten to Voight about a year before the Wick transaction (Tr. 98). Voight left his cattle with me after the purchase until just recently.

On February 9, 1952, the cattle in the Ellis herd comprised what I sold Wick and Voight. They were not separated; they were kept in the same pasture. Before I took Wick's check I went down and pointed out to him the cattle I was selling.

(Tr. 99) Q. Tell us exactly what you did in connection with that?

A. Well, he had a copy of the numbers that were—that I chose for him, and I had a copy, which we have here. By that, I mean the document marked Exhibit 2.

I went down into the pasture where the cattle were with Wick.

Q. Did you point out to him the different head of cattle that were in this list of cattle that you furnished him?

A. Corresponded to the chains.

You list cattle either by chains or tattoos. Best identification is chain (Tr. 99). The chain numbers are ⅜ inches high. The tattoos are located on the ears (Tr. 100). On our farm we list by both chain numbers and tattoo number (Tr. 100).

Mr. Wick was very satisfied with the cattle. I don't know whether he came back again in February or March. He came back after we came home from Hawaii.

When I left for Hawaii I told my herdsman to see that all of Wick's and Voight's cows were in calf. They're no good if they don't calf. I did not point out Wick's and Voight's cattle; it was all the same, so far as he was concerned (Tr. 101). We came back from Hawaii the last of May or early in June. Wick came to see me after I came home. He was accompanied either by Mary Lou O'Haran or by Pat O'Haran, her sister. They were down in the pasture with me. I pointed out the cattle to him (Tr. 102). At that time they either had calf on the ground or were in calf. The reason I did not register the cattle in Wick until July of ~~1952~~ is that they were sold guaranteed in calf and I needed that much time, and I had to wait until they conceived. It don't happen the first time always.

When Wick saw the cattle in June he expressed himself as very well pleased; his only mistake, he said, was that he didn't buy more. He came a second time before the September sale and inspected his cattle, and his particular head of cattle were pointed out to him then. The calves were at the cows' sides, then (Tr. 103).

It is true that Plaintiff's Exhibit 16, my catalog, stated "Terms and Conditions—Complete money back guarantee if not satisfied." But the words "as to breeders" should have been below it. It was announced "as to breeders" at the sale by Bill Barton, the sale manager, that way (Tr. 104).

The first time I had any indication that Wick was dissatisfied with his cattle was when I received his letter of September 24, 1952.

I did not guarantee Wick, either orally or in writing, that I would unconditionally return his money if the cat-

tle were for any reason unsatisfactory. I gave only a guarantee as I give to everyone (Tr. 104), that the cows would produce (Tr. 105). All the cattle assigned to him did produce. In September of 1952 some had produced and some were in calf.

These cows were serviced by Prince Eric 5th, GE, a bull.

(Tr. 106) I told Wick that I would take care of his cows and asked him a nominal sum. I guess we agreed around $10.00 a month, and breeding fees of $100, which was very cheap for the bull, and tend to the papers, and keep a record of his calves, which Kiki did. There was no certain time fixed as to how long we were to do this, but he was interested in buying a farm, and I was going to help him run the farm. We would put the cows on his farm if he had a farm, I imagine. He talked like he wanted me to oversee his farm for him and I was very glad to help him. We had no understanding as to when he was supposed to pay me for the keep of the cows and the servicing of them. Customarily at the end of the year, or something like that, six months, or something. We don't do it by the month. Voight did it at the end of the year. Bill Anheuser did it when he took them home.

(Tr. 107) I am not keeping cattle for anyone right now. The only ones I kept cattle for in 1952 were Wick and Voight.

We kept the certificates in August and September because we needed them so that Kiki could register the calves and have her data on that, so everything was done authentic, and that is the way it was done. When I found out that Wick no longer wished to have the cattle, that he wanted to renounce the sale (Tr. 107), I sent him the certificates (Tr. 108). If he didn't want us to run it, we had to give it to him to run (Tr. 107). This was done in September of 1952. I don't know the exact date. I first billed him for the keep and servicing after the September sale in 1952, and before December. Wick never offered to pay me for the keep of the animals, or for the service of my bull.

(Tr. 109) I did not send him the agister's lien petition. Wick never offered to retransfer these cattle to me. The cattle were finally sold by the sheriff at Montgomery. I

was not paid for the feed and servicing; Wick still owes me money.

Redirect Examination, by Mr. Baetz.

(Tr. 110) I did not say that the reason I kept the certificates and did not send them to Wick was because I had to be sure that the cows would conceive, and because if they didn't conceive I would have to substitute another cow. We kept them to carry out his offsprings, as he wished us to do. It is correct that I got the certificates from Ellis in January, 1951. It is correct that I sold the cows to Wick in February, 1952 (Tr. 111). The reason I didn't send Wick the certificates as soon as he bought the cows was that I used the certificates to get the dam and sire off of, to register the calves (Tr. 112). I had to keep them. It is true I had the pedigrees. I could have gotten the dam numbers off them. We kept the certificates because we kept all his papers. He wanted us to. He never asked—I took care of all of his papers. He asked us to keep all his papers (Tr. 114). I never told him what papers there were. The deal we made was that we would register his calves.

Q. He told you to keep all the papers? A. Agreeable.

Q. He told you—please answer my question. He told you then that you should keep all the papers with reference to that transaction? A. Why, yes, yes.

Q. He told you that?

A. Everything that corresponds to his cattle, yes.

Q. He told you that?

A. Everything that corresponded to his cattle, yes.

The period of gestation on a cow is nine months (Tr. 115). According to calves' certificates, they were dropped by eleven of the fifteen cows. The calves were dropped on the following dates in 1952:

March 8,
Mar. 14,
April 19,
May 6,
May 19,
May 20,
May 26;

June 13,
July 12,
July 12, and
July 22.

These were 11 of the 15 cows. Even though the gestation period is nine months, I wouldn't say they were pregnant with calf on February 9, 1952. You would have to have a veterinary. I wouldn't say, as a cattleman, that the cows that had calves between March and July had to be pregnant with them the previous February. I never heard of a calf being dropped three months after conception. I never heard of a cow being dropped five months after conception.

(Tr. 117). I was at the sale to satisfy the agister's lien. I couldn't say how many other cattle buyers were there. I don't know how big a crowd was there. They had a nice crowd; just farmers, that is all. There were no other cattle buyers there that I know of (Tr. 118). I don't know what each individual cow brought at the sale (Tr. 119).

Recross-Examination, by Mr. Lucas
(R. 33, Tr. 118-119).

There were six heifers among those sold to Wick. As far as I can tell from the records some cows conceived after the sale to Wick in February, 1952. I couldn't say when the remaining cows conceived (Tr. 119).

Redirect Examination, by Mr. Baetz
(R. 33, Tr. 119-122).

I do not remember which cows conceived after February 9, 1952. I bought none of the cows or calves directly or indirectly at the sale. My arrangement was for $10.00 per month for the upkeep of the cows, but you can't do it for that, Judge. You can't do it for twice or three times that. But that is what I billed him, $10.00 a month for feed and taking care of them.

R. 34, Tr. 122. The second full sentence should read:

I went to the show because I was interested in getting into, learning about, cattle as an investment.

R. 34, Tr. 123. First sentence should read:

Mary Lou O'Haran and her sister Patricia are members of that family; Mary Lou O'Haran is an employee of the organ company and her family live on a farm near Highland, where cattle are kept.

R. 34, Tr. 124, should read as follows:

Prior thereto, the Oklahoma sale was brought up and it was brought up to attend. We left Highland the later part of the day and spent the evening at Keshner's farm.

R. 34, Tr. 125, should read:

We all lodged the night there. Keshner and I did not have any conversation then about my investing money with him. On the trip to Oklahoma in the car I naturally asked a great many questions of him about what was involved in the cattle business, upkeep and maintenance.

R. 34, insert as first sentence of Tr. 127:

They (Keshner and Mary Lou O'Haran) were talking about pedigree, but that was completely foreign to me.

R 35. The sentence commencing immediately before (Tr. 129) should read:

I explained to him that in the pipe organ business there are times when I need the financial backing to help meet payrolls.

R. 35. In lieu of the first four lines of the last paragraph, as printed (Tr. 133), the same should read as follows:

I did not give Keshner the $15,000 then, but went on to Highland. I do not remember any further conversations until February 9, 1952. I next saw him on February 9, 1952.

(Tr. 132) A. Well, the conversation consisted of, again, confirming what I mentioned.

Q. Don't give conclusions; you must state what was said the best you can.

A. He indicated I would be purchasing fifteen bred heifers, and again stating, of course, that the maintenance on them would be on the basis of $200 per head per year, which included breeding.

R. 36, Tr. 134. Insert at the top of the page, after the word "mine," the following, and strike out from said record the words, "I couldn't see all of them":

I could tell which had double neck chains, which did not. It wasn't possible to see the appearance of each one of the double neck chain cows.

R. 36, Tr. 136. In lieu of what appears in appellant's record, insert:

Clint Holloman, Keshner's man who was taking care of his cattle, was there. He didn't point them out to me; he said he didn't know which cattle that were mine, that there was a herd of cattle in a certain field, and there were double neck chain animals in there and also animals owned by a man by the name of Mr. Voight in the same field, so that was the extent of our conversation. So I just left them. I was coming back from Kansas City and stopped there.

R. 36. Strike Tr. 137 as printed, and insert in lieu thereof:

(Tr. 137) Keshner got back from Honolulu in June, and I then called at the Good Earth Farm. I didn't ask Keshner at that time to see my cattle because, first of all, I had a young lady with me from Kansas City, and we just took a flight out to his farm, and he was sick in bed, and so he said, "Your cattle are over in a certain pasture with Voight's," but we just walked around the farm. It was an afternoon of leisure, so to speak, but I never saw any particular cattle.

R. 36. Tr. 140. The first sentence should read:

Shortly thereafter I heard my name announced as having bid on two additional animals, and since I hadn't bid, it was only then that I began to worry about the money I had paid out to him, and in talking with people after the sale there, it was specified that he probably used my name for buy bidding.

R. 37. Adding to Tr. 142, and substituting for the first line of Tr. 143, the following:

Q. Did Mr. Keshner, on February 9, 1952, or prior thereto, make any statements to you definitely as to the value of the animals which would be allotted to you for $15,000?

Mr. Lucas: Same objection, your Honor, as previously; representation as to value is not pertinent in the matter——

The Court: Be sustained. I think you have already been over that conversation.

Mr. Lucas: I objected before to it.

The Court: He's supposed to have told you what they said.

Mr. Baetz: I'm a little foggy-minded, your Honor.

The Court: Be overruled. I will let him answer. Let's get along. It is purely repetitious, but it looks like that is the only way I can satisfy you people. It's before the court. Read him the question.

(Whereupon, the reporter read the question.)

A. He said that they would be of the same value as the cattle that he would be——

The Court: He said he was going to give him 30,000 for fifteen, that's what he testified to before.

Mr. Baetz: Your Honor recalls that; I'm sorry, sir.

Q. (By Mr. Baetz) "The same value as that," one thousand or two thousand dollars, give me figures, if he used them. A. $2,000.

The Court: He told him he was going to give him a two thousand dollar cow for a thousand dollars; that's what he testified to earlier.

## Cross-Examination of Martin W. Wick
## (R. 37-44, Tr. 148-196).

R. 37, and R. 38. In lieu of Tr. 149, as there printed, the following:

I didn't know what to expect in the cattle business. I knew that each animal had a pedigree.

Q. Did you know that each registered animal had a registration paper?

A. I knew that each one had a pedigree, but as far as what I was supposed to get, I wouldn't know.

Q. Now, I believe you said Miss Mary Lou O'Haran, in your original testimony, knew about cattle, and—knew something about cattle and talked to you about the cattle, is that correct? A. Yes.

Q. Did you know that she had bought two cattle from Mr. Keshner sometime prior to this time for a thousand dollars each?

A. I knew that she had bought some cattle, but as to their value, I wouldn't know that.

R. 38. Tr. 151, first sentence to read:

I wanted to purchase the cattle then, purely to go into the business of raising pure-bred Angus cattle as an investment.

Because of the numerous omissions in the cross-examination of plaintiff, as reflected by the fourth paragraph on R. 38, we print here said paragraph in its entirety, including the omitted portions (Tr. 152-155):

Miss O'Haran, Keshner and I made the trip to Tulsa and Miami, Okla. We talked about purchasing an animal on the trip (Tr. 152). I don't remember whether cattle was selling high after the Miami sale. At the sale, Mr. Keshner said, "This is a good animal; how about taking a third interest in it?" I said, "Well, if you say it's a good animal" (Tr. 154). Miss O'Haran was to take a third interest, also. Then it was agreed at that time, and Miss O'Haran, who had handled Angus catttle for sometime, we three agreed to purchase this animal, each taking a third interest. I paid $1,000; the animal cost $3,000 (Tr. 155). I wrote the check for the $1,000 the same time I wrote the $15,000 check. The animal we bought there was not the first one through the ring. I had seen the sale at Miami the day before, and I had seen them sell at the Chicago sale. So then I made the determination, along with Miss O'Haran and Mr. Keshner, to buy the $3,000 animal and pay $1,000 for a third.

R. 39. Tr. 158. The third paragraph, first sentence, should read:

From where I was I could see the chains on the cows, but not the numbers.

R. 39. The last three sentences of paragraph 4, comprising part of Tr. 160-161, should be omitted, and the following substituted in their stead:

Q. Do you remember the conversation that she said she couldn't write Hartford Insurance on this herd because there was only fifteen of them, that Hartford would only insure fifteen as a group herd at three per cent, or six per cent, or whatever it was, and she told you that they wouldn't insure them unless they were eight years or younger. Do you remember any of that conversation?

A. No, I really don't remember that.

Q. It could have taken place, though?

A. It could have taken place, I suppose; I don't remember.

R. 39. Tr. 164. The last sentence should read:

Later I flew an airplane in. There was a young lady from Kansas City with me. We walked around the farm.

R. 40. Tr. 166. The first sentence, second paragraph, should read:

Keshner was sick at the time, and I didn't ask him to go down and point out my cattle to me, or send someone with me.

Because of the many material omissions in the cross-examination of plaintiff contained in the third paragraph on R. 40, we reprint the same here:

Both the O'Haran girls and I drove down one Sunday during the summer months. It was very hot. I am not familiar with droughts in that area (Tr. 167). I don't remember if it was dry in 1952 (Tr. 168).

Q. I will ask you this: Did you ever go down in the pasture and look at the cattle at any time during that summer?

A. No, as far as looking at my particular cattle, no.

Q. You never did go down and look at them? A. No.
Q. You're sure about that? A. That's correct.

* * * * * * * *

Q. You showed great interest in March or April about these cattle, and you wrote clear to Hawaii about it, didn't you? A. That's true.

Q. You had all summer to go out there and see those cattle and you tell the court you didn't go down into the pasture and look at it?

A. What I'm trying to get across, the point——

Q. Just answer the question.

A. I didn't go out and pick out any cattle. I walked around the farm on the occasion of each visit.

(Tr. 169) At one time Keshner was trying to arrange to see this farm of Hensley's, or something like that, but I told him it was impossible for me to spend any money like that (Tr. 170). I don't believe anyone other than the Misses O'Haran and the young lady from Kansas City ever accompanied me to the Keshner farm.

Q. Can you explain to me and the court why your great concern, along in February or March, and no concern looking at the cattle, if you didn't look at them, all summer long, up until September 24th or 22nd?

A. Well, actually what happened, after the—attending these sales, I mean I had such a complete interest in hearing from Mr. Keshner as to what's happening, I mean as he picked (Tr. 171) out my animals, and so forth, that, naturally, I was interested in learning something about it, plus the fact that I was coming back from Kansas City and wanted to stop in in any event and see the cattle.

Q. But you are certain that you didn't go down in the pasture and look at your particular cattle?

A. Not picked out, in other words. If they were my cattle, they were in with a herd.

Q. Pardon me? A. They were in with a herd, I'd say.

Q. In with the Voight cattle?

A. I suppose that is what they were.

Q. Did you ever go down in the pasture and look at these cattle with any other men, for example, other than Mr. Keshner? A. I don't recall.

Q. Maybe I can refresh your memory, Mr. Wick. Don't you recall the time you came in to Mr. Keshner, when Mr.

Waples was there, and you and Mr. Waples and Joe went down in the pasture and looked at these cattle and they were pointed out to you, and you commented on how well you liked them, and so forth, do you remember that?

A. I do not remember that.

Q. But you remember all about the trip back in March and April?

A. Yes, I remember those because they happened.

(Tr. 172) Q. You don't have any other idea of these other trips—if it was made? A. I don't recall.

Q. Could it have happened?

A. I don't even know Mr. Waples.

Q. I expect that is right, but you didn't go down in the pasture with him to look at these cattle. You couldn't if you didn't go down and look at them at all, could you?

A. That's right, I don't remember.

Q. And you are as sure of that as you are as sure of everything else you have testified to, I presume?

A. I'm sure of what I have told you to be the truth.

R. 40, Tr. 173, should read:

Although there were many people who wanted to see the cattle they bought at the sale, I wanted Keshner to pick out my cattle, show them to me one at a time. I had a good reason to be exercised about my cattle after the sale.

R. 40, paragraph 6, instead of the first line and one-half, it should read as follows:

I saw the cattle that day. I recognized them by the double neck chains. I was able to find them after Keshner told me where they were (Tr. 174).

Beginning with the last paragraph on page 40, to the end of the first paragraph on page 41 of the cross-examination of plaintiff, this should read as follows:

When I saw the cattle in the pasture there were calves running all over the place. I suppose that if the cows had been nursing the calves all summer long on a dry, droughty condition, they wouldn't be fat as animals going through the ring. I don't know if the keep I was to pay was supposed to keep them in sale condition. I didn't think it would so keep them. I didn't know what their ages were (Tr. 178). I attended a sale at Columbia before Keshner's

September sale and bought three cows and a calf. After the September Sale at Good Earth, I went to the Ralph Smith farm, where I purchased an animal for $1,500 (Tr. 179). Then I went to the Kansas City sale. Miss O'Haran and other cattle people were with me on the trip. She advised and recommended the sale. I didn't buy any at Kansas City; I didn't have any money left.

R. 41. The last sentence of Tr. 185 should read:

I received a copy of the petition that was filed and a letter from the Judge that the cattle was going to be sold.

R. 41. Tr. 187 should read as follows:

Q. Didn't he call you and tell you, or Mrs. Keshner, that he had a buyer for all of your calves, that crop of calves, that would be in December, 1952, that he would take all those calves at around 250 or $300, and you told him you wouldn't sell them that cheap?

A. No, I don't remember.

Q. Did you ever receive a letter to the effect that he had a buyer for all your calves?

(Tr. 188) A. All I remember is that he wrote in a letter this, I remember that, that I had to take the cattle off his property because he had—he was buying some other cattle.

Q. I hand you a copy of a letter dated December 13, 1952, addressed to you, and ask you if you ever received the original of that letter, Mr. Wick?

A. Yes, I remember that.

R. 43. In lieu of Tr. 190 to 192, the following:

Q. Now, knowing all the time that you had the registration papers of those very calves in your possession, where they had been transferred to you, is that right?

A. Knowing again what, sir?

Q. That you had the registration certificates of the very same calves already transferred to you, at least eleven of them. Right?

A. I had—my attorney had the registration certificates.

Q. Well, but you gave them to him; you had them prior to that and you could have gotten them, couldn't you?

A. Yes, I could have gotten them.

Q. Now, knowing that you have to sign those transfers—

A. When you say "now, knowing," yes, that's right, I know it now.

Q. You never offered to transfer those cattle back to him, did you?

A. Like you say, "now knowing." I mean I didn't know at that time what was supposed to have been done. This is—I mean apparently Mr. Richards cleared up a lot of things today that I didn't know about.

Q. But you knew Miss O'Haran knew, didn't you?

A. Yes, but——.

Q. And she is an employee of yours, isn't she?

(Tr. 191) A. Yes.

Q. You could have found out by merely asking her, couldn't you? A. That's true, I could have.

Q. But you elected not to ask anybody and to keep the certificates?

A. There was never any request made for those certificates—to my knowledge, I mean.

Q. You mean to tell this court that these certificates have never been requested of you before this date?

A. To be returned by Joe Keshner?

Q. Yes.

A. You mean Joe Keshner requested that they be returned? I don't remember that. He would be the natural person to ask for them if he's supposed to get them back. I recall of receiving no letter to that effect.

Q. After these cattle were sold, weren't there numerous requests to try to get the title of these?

A. To get the certificates back?

Q. Yes. A. I don't know of any.

Q. At the time the sheriff sold them, I'm sorry.

A. You mean that he specifically asked for these certificates to be returned?

Q. Yes. Look at me; don't look at Mr. Baetz.

(Tr. 192) Mr. Baetz: May I state this? At your request, your Angus Association wrote me——

Mr. Spencer: Now, Mr. Baetz——

The Court: Let's don't get into that. Let him answer the question, if he doesn't know, let him say he doesn't know.

Mr. Baetz: He doesn't know.

Mr. Spencer: Now, Mr. Baetz——

The Witness: I don't know.

The Court: You don't know?

The Witness: No.

I sent the letter, which was marked Defendant's Exhibit D, to Mr. Costello.——

R. 44. Paragraph 2 should read as follows:

On February 9 we saw the cattle in the pasture; that is correct (Tr. 193). At no time were any cattle ever picked out as you would normally do, and Keshner did not say, "Now, this is your cow," or "This is your heifer," or "This is the pedigree of the cattle." I never did ask to have each cow with a double neckchain identified by pedigree.

R. 44, Tr. 196. The last sentence should read:

But I did not count each one because they kept shifting around by the time I would look at one. I didn't show enough interest to even count to see how many there were, and because there were other cattle in there.

R. 45, Tr. 203 should read:

There was a drought in 1952, 1953 and 1954; it was dry all three years.

R. 47, Tr. 208. The first statement by the Court should read:

The Court: Overruled. It is a matter before the Court. I will permit him to answer for what it may be worth.

R. 48, Tr. 212 should read:

## ORVILLE HELMS.

Cross-Examination (R. 48, Tr. 212-223).

By Mr. Spencer:

I saw the tabulated pedigrees a few days ago. I never saw the registration certificates until today. I may or may not have seen the individual animals. They have never been identified to me. The particular animal has never been identified with the particular pedigree. I made the determination of values from three factors: pedigree, individual and age.

R. 48. The second paragraph, comprising cross-examination of witness Helms, should read as follows:

The cow represented by Exhibit 13-A was calved in 1939; she was 13 years old in 1952. 13-M was 11 years old in 1952; she was calved in 1941 (Tr. 218). The 11-year-old cow is $100 cheaper than the 13-year-old one (Tr. 218). Pedigree is also a factor, and there are also other factors. I do not know what per cent I gave age in making the evaluation (Tr. 219). I do not know what bull these cows were bred to, but I heard testimony which mentioned a bull named Prince Eric of Good Earth 5th (R. 220). I did not know whether they were in calf at the time they were sold.

Q. Do you know whether all of these cows were in calf at the time they were sold? A. No.

Q. Would it make any difference if you did know?

A. Well, as a breeder, I would assume they were, that age cows, or either had a calf at their side.

The Court: Trouble with you cow men, you assume too much. They ask you a question and you give an answer to it, and then you come up with a lot of assumptions. You're supposed to listen to the question and answer it as it is directed to you.

Q. (By Mr. Spencer) Now, as I understand, Mr. Helms, in putting the value on these cows, you did not take into consideration the bull they were bred to from your own personal knowledge? You have never seen the cattle of your own personal knowledge? The conditions of the sale,

who sold them, how they were advertised, the difference in quality, in making this determination, is that correct?

A. No, I didn't. I based my value on the tabulation pedigrees, valuation.

Mr. Spencer: I believe that is all (Tr. 222).

---

Direct Examination of CURTIS EASTWOOD (R. 48-49, 223-226).

Testimony of Curtis Eastwood, R. 49, first sentence of the second paragraph should read:

I saw the herd of cattle once that were owned by J. P. Ellis and were sold by him to Joseph Keshner in January of 1951, on the Ellis property.

R. 49. The use of the word "allotted" in the note at the bottom of the page is not based upon testimony of the witness, but is what Mr. Baetz contends.

Cross-Examination of Witness Eastwood.

R. 50. Tr. 233 to beginning of 236 should read:

I got $200 for two Blackcap Empress heifers in 1954, when it was dry. One of these was by the same bull for which I got $2,600 in 1951. Blackcap Empress have been a popular cattle. Blackcap Revolution probably started the ball rolling. Blackcap Empress was an International Grand Champion (Tr. 234). When you get a grand champion in the family it seems to boost up the price. Black Jestress are fourth branch Blackbird. Ralph Smith or someone had one that was a grand champion, that's right. They are very desirable to own (Tr. 236). If you can get ahold of one you can afford to pay.

R. 50. Tr. 237 should read:

Assuming that Frank Richards did say that the grand champion in 1952 was from the same family as these Lady Jeans, maybe it should affect their value as the Blackcap Empress should, but I haven't heard of anyone hunting them. The heifers Elbert Jones bought for $200 weren't the heifer the $2600 heifer was.

When testifying I did not have in mind the various respective individuals of this Ellis herd. We saw the Ellis cows in 1951; we didn't have a tabulation. I think that selling prices have something to do with values, yes.

The first paragraph, as printed in R. 51, of Tr. 239, should read:

I don't know Mr. Koster. If he bought one of this herd for $1,000 in 1951 and sold it the next year for $1,200 at private sale this wouldn't affect me on this tribe of cattle.

Preceding the last sentence of what appears to be Tr. 239, R. 51, there should be inserted:

These 1950 calves that I saw down at Ellis' farm were very nice heifers. If the animals are calves in 1950, they could calf in 1952.

R. 51, Tr. 242, should read:

I know nothing of degree of pregnancy. It makes a difference what bull a cow is bred to regardless of the female. It is possible, in some cases, that the same cow, with the same pedigree, would sell higher or lower, depending on who is selling her, yes. I have heard of cases where a cow might sell for maybe $2,000 in less than a year's time for two or three times the original selling price. The reason is that the owner probably bred the cow to a $50,000 or $60,000 bull.

R. 51. Insert in lieu of the first sentence of Tr. 243, the following:

That had something to do with it.

Q. They don't always sell at the same price in successive sales, same breeding, same type of bull or anything else, do they?

A. Oh, there's some herds advertised more than others.

R. 51, Tr. 244. The date at the end of the first line should be 1953, not 1943.

R. 51. Tr. 246. Instead of the last sentence, insert:

Q. So we cannot limit it to an individual 50 per cent and tabulation 50 per cent, can we?

A. Well, you would have to consider the cow, the bull, kind of bull a cow was bred to, but when I say 50-50, if you went out and bought open heifers and calves—that's what I had in mind.

Q. Now, wait a minute, Curtis. You had in mind, according to the counsel's question, that you assumed that they were in calf.

A. I still stick to 50-50 when I go to buy a female.

Q. 50 per cent individual, 50 per cent tabulation?

A. I would.

---

Direct Examination of R. EMMETT COSTELLO (R. 52, Tr. 247-252).

R. 52, Tr. 248. Add to first sentence, so that same reads:

On December 24, 1952, I wrote Mr. Wick about a demand of Mr. Keshner against him for a feed bill, and also to take from Mr. Keshner's farm the cattle that I understood was sold by Mr. Keshner to Mr. Wick.

R. 52. The last sentence preceding Tr. 251, as printed, should read:

I was anxious for Wick to take over the cattle (Tr. 251), that I understood he had bought and paid the feed bill, that he might owe for the time the cattle had been in Mr. Keshner's possession through an understanding that I understood he had with Mr. Wick.

---

Direct Examination of MARY O'HARAN (R. 53, Tr. 253-266).

R. 53. Tr. 260, should read:

He said the cow drops a coupon once a year, and you can't lose if the good Lord don't call them home. Those are the only statements that stuck with me.

I next accompanied Mr. Wick to the Good Earth Farm on February 9th.

R. 54. Tr. 264, should read:

We just walked in the pasture; there were about 25 or 30 cows in there. Keshner said that the cows allotted to Wick were wearing double neck chains. Mr. Keshner said that some of Mr. Wick's had double neck chains, but we couldn't tell his double neck chained cattle from the other double neck chained cattle.

R. 54. The last sentence of Tr. 265 should read:

I had asked for time off to go to a Texas sale, and we got to talking, and he said he would like to invest in cattle and wanted to know if I knew anything about it; and after we came back we talked about it.

Cross-Examination of MARY O'HARAN
(R. 54-56, Tr. 266-278).

R. 54. The last sentence of Tr. 268 should read:

Mr. Wick's cattle belong to two families, Pride of Aberdeen and Erica. In February, we walked into the lot but didn't get too close to the cattle.

R. 54. Tr. 271, should read:

That is what the transfer said. If Prince Eric GE 5th bred the cows, he would have to be with them sometime or other. Mr. Keshner said the bull with the cows was Prince Eric 30th something.

R. 55, Tr. 275, should read:

It is possible and possibly something was said how the cows looked. I didn't say anything. I have attended a lot of sales. I have never heard a supposed buyer deny that he made a bid.

R. 55. Tr. 276 should read:

On February 9, 1952, I went with Mr. Wick to the pasture where 25 or 30 cattle were. Some of them had double neck chains. Mr. Keshner said the double neck chained cattle were the ones Wick was interested in, and Mr. Wick so stated. They both stated that the ones with double neck chains were Mr. Wick's cattle.

---

R. 55. PATRICIA O'HARAN, Direct Examination, Tr. 278:

I am employed at Wick's organ company.

R. 55, Tr. 279. Add after the sentence, "I have been to several sales and the International," the following:—

I learned about Angus cattle since I was 19

R. 55. Tr. 280, should read:

Mr. Wick, Mary and I went to look at some cattle in the pasture. Some were as far as from the witness stand to the front of the court room. The cattle were all around, not very close; there were two fields with a fence between; the cattle were in one field and we were in the other, I think. It seemed to me like a big herd, 30 or something.

R. 55. Tr. 281 should read:

Q. Did you hear any statements by Mr. Keshner with reference to the identity of those cattle as being chosen for Mr. Wick?

A. I mean I didn't know what they were doing at the time. I was just out there. But he did say something about the double neck chains.

Q. Keshner did?

A. Yes, and he said that some of the ones that had double neck chains were Mr. Voight's.

Q. Were Mr. Voight's? A. Yes.

I didn't have any reason to count the animals.

Mary, Martin and I also went to the farm in the summer of 1952, and while there we looked at cattle.

R. 56, Tr. 283 should read:

I was also there at the 1952 sale. I can remember Martin then asked Joe where the cattle were, and Mr. Fairchild and Betsy Voight and Mary, Martin and I drove out into the field, looked to me like the same cows. I mean they had double neck chains on. Of course, I don't know, and we saw those cows. There were approximately 30 plus the calves.

Cross-Examination of PATRICIA O'HARAN
(R. 56-57, Tr. 284-294).

R. 56, Tr. 284, should read:

When I went out in September of 1952, the cattle I saw in the particular field looked like the same cows I had seen back in February, except that there were some more calves. I guess the cows looked thinner then than in February, but they were just cattle. It was dry, but I don't know what the degree of drought was. They had double neck chains.

The first line of the fourth paragraph, R. 56, Tr. 287, should read:

There were double neck chains and single neck chains, and the ones with double neck chains were supposed to be Mr. Wick's.

R. 56, the first sentence of Tr. 290, should read:

Mr. Keshner and Mr. Wick went in the field to look at this group of cattle.

---

Defendant's Evidence.

Direct examination of FRANK RICHARDS (R. 59, Tr. 33).

R. 59. The first two sentences from Tr. 36 should read:

Quite often sales are made before transfers are effected with the association. Under the rules a transfer within 30 days has a certain fee, a transfer 30 to 60 days has another fee, and over 60 days the fee varies. And on the application for transfer there is a sale date and a delivery date and very often those are different dates. As between the parties themselves, we are not advised of the exact date of sale (Tr. 36).

R. 59, Tr. 37. In lieu of the last two sentences, insert:

I think drought conditions throughout the country are primarily responsible for less demand. We have found in sales that have been held in the last two years that a majority of the cattle have been open heifers, that is, heifers that have not been bred. Therefore, the cattle have been selling younger, and possibly not in as good a condition as they were sold prior to drought years.

Aberdeen-Angus cows have produced calves when aged up to 20 years and older, but that is an exception.

R. 60, Tr. 38. In lieu of the recital beginning with the first sentence in the first paragraph at the top of page R. 60 insert:

I am familiar with the Lady Jean and Trojan Erica family. A female called Lady Banmere was traced to

the same foundation as the Lady Jean tribe, and made the Grand Championship at the International Live Stock Exposition in Chicago.

Cross-Examination of Witness RICHARDS
(R. 60, Tr. 39-55).

R. 60, Tr. 42. In cross-examination, insert in lieu of the last two sentences in paragraph 5, Tr. 42, the following:

Q. We start him off on your records. Where on those blanks is a space for Keshner or anyone else to tell the date between date of sale or date of delivery or anything else?

A. Not on this; the sale is on a separate sheet of paper, a pink sheet, that is an application for transfer.

Q. I see. Now, when you get a retroactive or post-dated certificate, or I don't know the terminology of your Association, what I mean is when you get a transfer or an original entry that reflects something done previously, is there any indication of that fact other than the dates which are filled in on the usual blanks in the certificates?

A. There's nothing like that.

R. 60, Tr. 43. Insert before the last sentence:

The name should appear on a family tree.

R. 61: Insert in lieu of what appears to be the last two sentences of Tr. 46, actually Tr. 47, the following:

I know that that bull was sired by a bull called, I think it was Prince Erica 2d of Sunbeam. Prince Erica 2d of Sunbeam was sired by a bull called Prince Erica of Sunbeam, which became a very important bull in our breed of cattle, sold in the early forties for $40,000 at a sale in Chicago, later sold in a Ralph Smith dispersion at Lonejack, Missouri, for the sum of $36,000 to Mr. L. L. O'Brian, Mukwonago, Wisconsin, and was later sold by Mr. O'Brian to Shadow Isle Farm in New Jersey for a hundred thousand dollars.

Q. This is an ancestor——

A. This is a full brother to the sire of the bull that you mentioned here.

I know Mr. Keshner has used the full brother of the bull that I have described and has used some of that bull as herd bulls in his herd.

---

R. 63, GLEN WAPLES—Direct Examination—Tr. 302 and 303 should read:

(Tr. 302) I think Patricia O'Haran went along. My son was there also. We went to a pasture north of the house. The occasion of our going out there was that I just heard them talking about going out to look at Mr. Wick's cattle. They invited me to go along. The cattle were in the pasture. Wick accompanied us into the pasture; so did Keshner. (Tr. 303) There were 25 or 30 cattle there.

In response to a question as to whether anything was said by Keshner to Wick with reference to which was his cattle in that particular group, Waples stated that Keshner walked by certain individuals and pointed them out and talked about them, "those being the ones, as I understood it." There were 8 or 10 pointed out to him—might have been more.

R. 63. The first sentence of Tr. 306 should read:

I suppose it was in the late fall of 1951.

R. 63. Tr. 307. Cross-examination, the first sentence should read:

The cows I was going to buy at $1,000 a head were the cows he later sold to Mr. Voight; I believe (Tr. 307).

R. 64. Tr. 311 should read:

But I think they were. Some of them could be the ones later purportedly sold to Wick. I don't know whether all of them have now disappeared from Keshner's herds. I don't know anything about them.

R. 64. Tr. 312, should read:

All of them were practically the same breeding, the same families. The individuals run about the same if——

As a cattle expert, I would say that every animal in the Ellis herd was just about the same value as far as families were concerned, but I wouldn't say that exactly about the

individuals. If we had gone through the deal, we would have picked out what we considered ten better individuals.

R. 64, Tr. 313, first sentence should read:

I don't know if Keshner would have permitted me to pick out the best ten.

R. 64, Tr. 314 should read:

As I say, the cattle all looked about alike and their families were the same. Yes, they looked alike; they were all worth about the same per head. The families were all similar and the individuality was a good deal alike. I will say that in my opinion as a cattleman, each and every animal in that Ellis herd was worth about the same. And since there were 33 animals, I would say that the Ellis herd at that time was worth $33,000.

---

KATHERINE KESHNER, Direct Examination (R. 65, Tr. 318):

R. 65. Preceding recital of Tr. 319, insert:

I have two children.

R. 65, Tr. 321. The first two sentences should read:

I prepared a statement of the transaction. Plaintiff's Exhibit 2 is a copy of it, made simultaneously with the original.

R. 65, Tr. 322. In lieu of the first sentence, the first quotation of the conversation between Wick and Keshner in the first sentence of the last paragraph of R. 65 should read:

The original was signed by Mr. Keshner and Mr. Wick and given to Mr. Wick. Martin asked Joe, "We'll sign your copy, too?" Joe said, "That isn't necessary; I have your check in payment."

There was a discussion about the ages of the cattle which were being sold by this statement.

R. 66. Tr. 323-324 should read:

When Mr. Wick purchased these cattle they were purchased with a guarantee that they were bred cows. The

ones that had not conceived, to conceive. It was decided we should wait as to the insurance.

R. 66. Tr. 327, the first sentence should read:

After my return I saw Mr. Wick at the farm when he flew in in his private plane.

R. 66. Tr. 328, 329 and 330, and that part of Tr. 331 and 332 as appears in all but the last paragraph of R. 66, should read:

The next occasion was in July, when he came with Mary Lou O'Haran and possibly Patricia. They went to look at the cattle in company with Mr. Keshner. I did not go with them. They discussed how the cattle looked good (Tr. 329). Mr. Wick was pleased with his cattle. The next time was when he flew in with a lady from Kansas City. Mr. Keshner was sick at that time, and I went over and got them at the airport. He went to look at his cattle. He said that his cattle looked fine (Tr. 33). The next time he came in with Mary Lou O'Haran and Patricia. Mr. and Mrs. Waples were at the farm. Mr. Wick went and looked at his cattle. Mr. Keshner, Mr. Wick, Patricia, Mr. Waples and Mr. Waples' son went out to look at his cattle. I did not go. He said that his cattle looked very good and the calves looked very promising. The next occasion was at our annual sale in September. He came into the house that morning (Tr. 331). He made no inquiry as to his cattle to me. We had a party at the farm after the sale, and he was there. He did not discuss his cattle in my presence. He did not say on that day that he was dissatisfied with his cattle.

I next saw him at the Ralph Smith sale after our sale (Tr. 332). He made no statement to me or anyone else there about his cattle. I don't remember if I saw him again.

R. 67, Tr. 333. At the end of top or first paragraph, add:

The rest we sold.

## Cross-Examination KATHARINE KESHNER (R. 67, Tr. 334).

R. 67—Cross-Examination. In lieu of Tr. 336 and 338, insert:

A. You're asking me to read from my bookkeeping books, the way my books are set up on the Ellis herd, in the year when they were acquired?

Q. Yes, ma'am.

A. I have a tax account, and when we purchase cattle, we purchased the Ellis herd, I show that in my books as the Ellis herd purchased for the sum that we purchased. However, during the course of that year, when we sold cattle in that year, my books merely indicate that I sold so many head from the Ellis herd, and until the end of the year, when my books are taken into consideration for tax purposes, we only had a certain number of the Ellis herd left on our farm during that first year. You recall, I told you some cattle were sold. I did not have to have a list of those cattle. Only at the end of the year are my books—the remaining Ellis herd is in my books.

Q. Well, can you tell me this, and I thought you answered the court, but I may have misunderstood you, when you acquired the Ellis herd, did you set down on your books a value for each one of the animals?

A. I set in my books the purchase. I show the purchase of the Ellis cattle for a certain fee. That is what is set up in my books.

Q. Did you break it down into individual animals?

A. Not when the cattle were purchased.

At the end of the year they are broken down.

R. 67. The first sentence of paragraph 4, Tr. 341, should read:

We charged ourselves $11,000 for the herd;

R. 68, paragraphs 2 and 3, Tr. 345-346, should read:

The Voight cattle were left on the farm until the fall of 1954. They were on the farm for a couple of years at least. The calves sold around $250 to $300 each. Some higher (Tr. 346). I don't recall of any selling for less.

The cost of keeping, feeding and maintaining a cow is about $120 to $175 per year; in that general neighborhood. Unless I saw the figures I wouldn't know.

R. 71, second paragraph, first sentence, Tr. 355, should read:

The entry of Prince Eric 5th on Exhibits 5-A to 5-K, the calf certificates, is off the stubs sent in to the Association.

R. 71. Add to the last sentence of paragraph 3, Tr. 357:

There are occasions when we will sell a cow that we have purchased.

Last paragraph of R. 71 should read:

Any breeder is proud of his sale average; I don't mean us in particular, any breeder is. Sales average is not everything. It's the cattle; we're proud of the cattle. Sale average, of course, goes with the cattle. We're proud of who they go to.

R. 72. Tr. 359. Top of page, first sentence should read:

Page 32 of the Aberdeen-Angus Journal shown me is our advertisement for the Good Earth sale in 1952.

---

Direct Examination of GEORGE E. COOPER.

R. 72, Tr. 360, the last sentence of the first paragraph should read:

I have judged cattle, I think, in every State of the Union and in Canada at least four times; Angus as well as Jerseys, too, Holsteins, Shorthorns, all kinds.

R. 72, Tr. 364, should read:

I will guarantee that it isn't possible to base the value of an animal on pedigree alone without a careful examination of the individual animal. There isn't anybody can do it: You have to look at the animals pretty good, quite close. You would have to be better than I am to just pass by them.

We bought the Bar X herd in November of 1953. There were 70 head. When a calf is nursing her mother we in-

clude that one and the calf is not counted as an individual. We paid an average of $400 a head for them. We have sold 20 of them at an average of right near $1,700, and the best of them (Tr. 365). We took out probably the best six and put in my topper. They varied from calves not already weaned up to cows 14 and 15 years old.

It is not unusual in the cattle business to make a profit of that kind when you buy a herd. It's done every day.

R. 73. Tr. 367, should read:

An announcement was made prior to the sale by Bill Barton, at the auction block, that the money-back guarantee was effective on cows that would not breed. They were guaranteed to be breeders. That is typical; that is customary.

We sold a set of twin calves recently, within the last 30 days, for $3,500.

Cross-Examination of GEORGE E. COOPER
(R. 73, Tr. 367):

R. 73. In lieu of Tr. 368 to 371, insert:

Q. Wouldn't you say this is so, Mr. Cooper, that if I showed you a pedigree in a certain case you could say whatever the condition of that animal is, no matter how good she is, she couldn't be worth more than thus and so, isn't that true?

A. No, I don't think that is true, because in the last two years, I have paid more money for cattle, cows, than I ever thought I would pay five years ago. I don't think anybody can tell how much a cow was worth today by just looking at her, or studying her pedigree alone. You got to look at her as well.

Q. You then, as I understand it, if I would hand you a certain pedigree, you wouldn't say this cow couldn't be worth more than four or $500, no matter what its shape, because its pedigree wouldn't justify it? You couldn't even go that far? You would have to see the beast, is that right?

A. You're asking me to do something I don't know.

Q. I realize, I'm not asking——

A. You're picking out a fictitious case and I don't think that should be.

Q. You don't think that should be done?

A. No, I don't think that is right. I paid $31,500 for a cow and calf, within the last two years.

(Tr. 369) Q. Just for example, look at Plaintiff's Exhibit 13-A, an animal born in 1939, has endorsed at the top the family name, Enchantress Trojan Erica. Just look at that pedigree, sir, and say whether that looks like one of these pedigrees that would authorize or justify a high price? A. This is a pretty good pedigree.

Q. What family, sir?

A. You have Enchantress—you're asking me to analyze pedigrees. That is about what you are asking me to do.

Q. My question was this, and you may supplement it if you have any information there, my question is, look at that and see if that justifies a thousand dollars a cow?

A. You want me to tell you why?

Q. First, does it in your opinion? A. Yes.

Q. Then tell me why.

A. You have Eileenmere 32", International Grand Champion bull, Eileenmere 15", International Grand Champion bull, Earl Marshall, a bull that's sired six International Grand Champions; Earl Marshall again, Bertram's Earl, another bull that's well known (Tr. 370); Bertram Earl again, and those are all top bulls in the Angus breed today.

Q. What family does that particular——

A. Enchantress Trojan Erica.

Q. Do you have any of those animals in your herd?

A. Lots of them.

Q. Lots of them. Now, look down here, sir, to another one, the next one in the list, that is Plaintiff's Exhibit 13-M, but because there are two 13-M's, by reason of error, I will give the name of the animal, Imogene Adelia the 41st. That is the short paper up here. Do you think that that pedigree warrants a thousand dollar cow?

A. It could be, and it could not be. I can't tell you. The pedigree could have a thousand dollar cow with it just as well as not, yes.

Q. Could have. That one there, too, what family is that? A. Lady Jean.

Q. That is not J-á-n-e, but J-e-a-n?

A. That's right, I misspoke it, Lady Jean.

Q. How many of those animals just roughly, do you embrace within your herds out here?

A. I don't happen to have any Lady Jeans.

Q. And, as a matter of fact, you don't know anybody that is very proud about the Lady Jeans?

A. Well, if I'm not mistaken, there's an International (Tr. 370-371) Grand Champion that's a Lady Jean.

Q. Maybe you are mistaken. Could you tell what the name of that animal is?

A. Heifer Tolen showed two years ago.

Q. Have you ever had any——

A. Grand Champion in 1952.

Q. Have you ever had any of the Lady Jean in your herds? A. No, I haven't.

Q. Any of them ever been offered to you? A. No.

Q. Just never came across them?

A. Not to my knowledge.

Q. Would you turn them down if they were?

A. Not if they are good.

Q. And not if they are young, is that right, sir?

A. That is indefinite; what do you mean, "young"?

Q. What does a cowman, cattleman, I should say, let me ask you this, you seem to know a great deal about it: What is the average life span of a cow, this breed?

A. Oh, we figure around 14 to 15 years.

R. 74. Tr. 372, should read:

She starts producing as a two-year old and she usually produces until you dispose of her. I couldn't call an 11-year old a young cow; she's getting to be an old cow. I put a cow out to hay last year that was 19 years old and she had a calf. I wouldn't say as a general rule that a cow of 11 is getting to the end of the line, and that a cow of eight is beginning to go down grade. It depends on the individual;; some cows will start down at that and some won't; I wouldn't give a general rule.

CLINT HOLLOMAN—Direct Examination.

R. 74. Tr. 375. In lieu of the last two sentences of the second paragraph of Direct Examination, insert:

The bull has only been off the Good Earth Farm for about two hours when he was taken for sale and as a reference sire at the Triple A ranch. We had bred some heifers to him. It means that he was a kind of a featured sire. It was not over two hours.

R. 75. Second line, top of page, after the sentence, "He died of disease," insert:

We had five veterinarians checking him.

---

As shown at page 384 of the transcript, Record 76, Defendant's Exhibit E, being the judgment in the agister's lien suit, was admitted in the evidence by stipulation of the parties. The appellant's record does not set forth this judgment, which was pleaded in the fourth defense in the defendant's amended answer to each Count of the plaintiff's complaint herein (R. 11, 12), as res judicata of the ownership of the cattle in question and the status of the parties as a bar to plaintiff's action. Said omitted Exhibit E is as follows:

(Exhibit E.)

Be It Remembered, That on this 25th day of August, 1953, appeared Honorable O. A. Kamp, Judge of Magistrate Court.

Whereupon by order of the Judge, Court was opened.

| | | |
|---|---|---|
| Joseph Keshner, Plaintiff, vs. (Case #1301) Martin M. Wick, Defendant. | } | Suit to Enforce Agister's Lien. |

Now on this day on which this cause is returnable and set for trial, comes plaintiff in person and with counsel, George A. Spencer, and defendant having been

duly notified of this proceedings by publication of notice, one week in the Montgomery Standard, a weekly newspaper of Montgomery County, Missouri, and proof of publication of notice having been filed; said notice to defendant having been ordered by the Court after Sheriff had made return on summons showing defendant not found in the County; and in addition to the order of publication of notice to defendant aforesaid, the Court having further ordered that defendant a non-resident, be notified further by the mailing of a copy of the petition and a copy of the order of publication by registered mail to defendant Martin M. Wick, of Highland, Illinois, to be receipted for by addressee only and the return receipt signed by Martin M. Wick having been returned and filed in this Court all in accordance with the law; and although defendant having been duly summoned and notified of this proceeding in accordance with law, comes not but makes default, and the Court, having heard the evidence, doth consider and adjudge that the plaintiff is a resident of Montgomery County, Missouri, and within the jurisdiction of this Court, and is entitled to and have his lien upon the following described property, to-wit:

(Here are inserted the names, dates of birth, registration numbers and tattoo, and chain numbers of the 15 cows sold to plaintiff.)

and the ten calves born to the above cows, numbering ten, which have not been recorded, chained or tattooed, and the 1952 calves, listed as follows:

(Here follow the names and chain numbers of dams, sex of calves, birth dates and names of calves and chain numbers of calves born in 1952, from March 14, 1952, 13 in number, the evidence showing that two of the calves born in 1952 to said cows had died. The list of said cows and calves corresponds to the list shown in Plaintiff's Exhibit 20, R. 45, except for those born after registration certificates were sent to Mr. Wick.)

and that the plaintiff have and recover judgment for the sum of Six Thousand Two Hundred Thirty-one Dollars and Fifty Cents ($6,231.50) against the defendant for the labor, feed, care, mineral, salt, train-

ing and keep for the above described property, furnished by plaintiff to the defendant, which property the Court finds to be located on plaintiff's farm and within the jurisdiction of this court, and for his costs herein, and it is ordered that the property hereinbefore described and adjudged charged with said lien be taken and sold to satisfy said lien and judgment.

---

(Here follows Certificate by the Clerk of the Magistrate Court of true copy.)

There being no dispute about the sufficiency of the petition (Plaintiff's Exhibit 18), the order of publication of notice to Martin M. Wick, defendant, in the agister's lien suit (Defendant's Exhibit B), and the special execution and report of sale by the Sheriff, duly certified and authenticated (Plaintiff's Exhibit 19), they need not be further copied or transcribed.

---